



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101-3140

OFFICE OF  
REGIONAL COUNSEL

Reply To: ORC-158

December 6, 2012

Steven A. Herman  
Beveridge & Diamond, P.C.  
1350 I Street NW, Suite 700  
Washington, DC 20005

IBCs  
CAFO Docs

**Re: Draft Consent Agreement and Final Order  
Docket Number FIFRA-10-2012-0208**

*Steve*  
Dear Mr. Herman:

I have enclosed a draft Consent Agreement and Final Order ("CAFO") reflecting the agreement we reached on November 20, 2012, to resolve alleged violations of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") by IBC Manufacturing Company. Please review the CAFO to ensure that the terms reflect your understanding of the agreement. If it is acceptable, please have the Consent Agreement signed and forward the original to me. When we receive the signed agreement, we will sign and file it, and send you a copy. The penalty will be due 30 days from the filing date of the CAFO.

If you have any questions or concerns, you may reach me at (206) 553-0240 or via email at [st-peter.mary@epa.gov](mailto:st-peter.mary@epa.gov).

Sincerely,

Mercer St. Peter  
Assistant Regional Counsel

cc: Chad Schulze  
U.S. Environmental Protection Agency

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

GARDNER-FIELDS, INC.,  
and IBC MANUFACTURING CO.

Respondents.

DOCKET NO. FIFRA 10-2012-0208

**CONSENT AGREEMENT AND  
FINAL ORDER**

This Consent Agreement and Final Order ("CAFO") only resolves the claims against IBC Manufacturing Co. ("IBC") in the above-captioned case. The claims against Gardner-Fields, Inc. ("GFI") were resolved in a CAFO filed on November 6, 2012.

**I. STATUTORY AUTHORITY**

1.1. This CAFO is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part IV of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and Respondent IBC agrees to issuance of, the Final Order contained in Part IV of this CAFO.

## **II. PRELIMINARY STATEMENT**

2.1 On September 27, 2012, EPA initiated this proceeding against Respondents GFI and IBC pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), by issuing an Administrative Complaint ("Complaint"). On October 18, 2012, EPA filed an Amended Complaint.

2.2 The Amended Complaint alleges that Respondents' violations of FIFRA had subjected Respondents to civil penalties.

2.3 The complete factual and jurisdictional basis for proposing the assessment of a civil penalty is set forth in the Amended Complaint, and is incorporated herein by reference.

## **III. CONSENT AGREEMENT**

3.1 Respondent IBC admits the jurisdictional allegations in the Complaint.

3.2 Respondent IBC neither admits nor denies the specific factual allegations in the Complaint.

3.3 As required by Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), EPA has considered the appropriateness of the penalty to the size of the business, the effect on the person's ability to continue in business, and the gravity of the alleged violations as well as Respondent IBC's economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent IBC agrees that an appropriate penalty to settle this action is \$265,000.

3.4 Respondent IBC consents to the issuance of the Final Order recited herein and to payment of the civil penalty cited in Paragraph 3.3 above within 30 days of the effective date of the Final Order.



3.5. Payment under this CAFO must be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Respondent IBC must note on the check the title and docket number of this action.

3.6. Respondent IBC must serve photocopies of the check described in Paragraph 3.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Chad Schulze  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-084  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

3.7. If Respondent IBC fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 3.4, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent IBC to a civil action to collect the assessed penalty under FIFRA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

3.7.1. Interest. Any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part IV, provided, however, that no interest

shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order.

3.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. If Respondent IBC fails to pay on a timely basis the penalty set forth in Paragraph 3.3, Respondent IBC shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of Respondent IBC's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

3.8. The penalty described in Paragraph 3.3, including any additional costs incurred under Paragraph 3.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

3.9. The undersigned representative of Respondent IBC certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent IBC to this document.

3.10. Except as described in Subparagraph 3.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

3.11. Respondent IBC expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part IV.

3.12. The provisions of this CAFO shall bind Respondent IBC and its agents, servants, employees, successors, and assigns.

3.13. The above provisions are STIPULATED AND AGREED upon by Respondent IBC and EPA Region 10.

DATED:

FOR RESPONDENT:

\_\_\_\_\_

Signature

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

DATED:

FOR COMPLAINANT:

\_\_\_\_\_

EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement

#### IV. FINAL ORDER

4.1. The terms of the foregoing Parts I-III are ratified and incorporated by reference into this Final Order. Respondent IBC is ordered to comply with the terms of settlement.

4.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to FIFRA for the violations against Respondent IBC alleged in the Amended Complaint. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent IBC's obligations to comply with all applicable provisions of FIFRA and regulations promulgated thereunder.

4.3. This Final Order shall become effective upon filing.

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2012.

---

THOMAS M. JAHNKE  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10



**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in: **In the Matter of: IBC, Docket No. FIFRA 10-2012-0208**, was filed, and served as follows, on the signature date below.

The undersigned certifies that a true and correct electronic copy of the document was delivered to:

Mary Mercer St. Peter  
U.S. Environmental Protection Agency  
Region 10, M/S: ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of this document was placed in the United States mail, certified/return receipt, to:

Steven A. Herman  
Beveridge & Diamond, P.C.  
1350 I Street, NW, Suite 700  
Washington, DC 20005

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Candace H. Smith  
Regional Hearing Clerk  
EPA Region 10



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Washington, DC 20005

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Candace H. Smith  
Regional Hearing Clerk  
EPA Region 10

RECEIVED

13 FEB 26 AM 8:07

HEARINGS CLERK  
EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

GARDNER-FIELDS, INC.,  
and IBC MANUFACTURING COMPANY )

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1.2. The Administrator has delegated the authority to issue the Final Order contained in Part IV of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and Respondent IBC agrees to issuance of, the Final Order contained in Part IV of this CAFO.

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3.4 Respondent IBC consents to the issuance of the Final Order recited herein and to payment of the civil penalty cited in Paragraph 3.3 above within 30 days of the effective date of the Final Order.

3.5. Payment under this CAFO must be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency  
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Respondent IBC must note on the check the title and docket number of this action.

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U.S. Environmental Protection Agency  
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1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Chad Schulze  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-084  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

3.7. If Respondent IBC fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 3.4, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent IBC to a civil action to collect the assessed penalty under FIFRA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

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3.8. The penalty described in Paragraph 3.3, including any additional costs incurred under Paragraph 3.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

3.9. The undersigned representative of Respondent IBC certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent IBC to this document.

3.10. Except as described in Subparagraph 3.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

3.11. Respondent IBC expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part IV.

3.12. The provisions of this CAFO shall bind Respondent IBC and its ~~agents, servants,~~  
~~employees,~~ successors, and assigns and EPA.

3.13. The above provisions are STIPULATED AND AGREED upon by Respondent IBC and EPA.



DATED:

February 8, 2013

FOR RESPONDENT:

IBC MANUFACTURING COMPANY

By

Signature

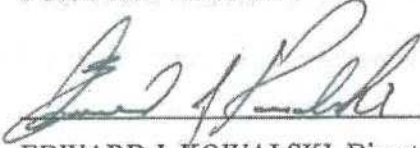
Print Name: Joseph A. Ignatoski

Title: President

DATED:

2/15/2013

FOR COMPLAINANT:

  
EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement

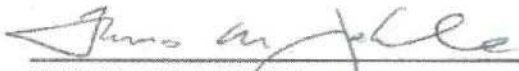
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4.3. This Final Order shall become effective upon filing.

SO ORDERED this 25<sup>th</sup> day of February, 2013.

  
THOMAS M. JAHNKE  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of : IBC Manufacturing Co., Docket No.: FIFRA-10-2012-0208**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Mary Mercer St. Peter  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Suite 900  
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Steven A. Herman  
Beveridge & Diamond, P.C.  
1350 "I" Street, NW, Suite 700  
Washington, DC 20005

DATED this 26<sup>th</sup> day of February, 2013



Signature

Candace H. Smith  
Regional Hearing Clerk  
EPA Region 10